General terms and conditions of contract ('local terms and conditions') for supplying services and work on behalf of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH in South Africa, Lesotho, and Eswatini

1. General provisions for supplying work and services

1.1. Applicable law, place of jurisdiction

The contract is subject to the laws of South Africa, Lesotho, and Eswatini. The contractor's general terms and conditions of business or payment shall not apply. The place of jurisdiction is South Africa. GIZ may also institute proceedings against the contractor before the competent court for the latter's place of residence or place of business or habitual place of residence.

1.2 Form

Any amendments or supplements to the contract and all material communications must be in text form unless the parties have made different arrangements or a stricter format is prescribed by law. Cost-neutral extensions of the performance period without changes to the specification of inputs do not call for a written contract supplement and can be agreed in text form.

1.3 Quality of work and services

The work and services to be provided must comply with the recognised state of scientific knowledge and the generally accepted rules of technology as well as the terms of reference. They must be of excellent quality.

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1.6 Confidentiality

Any and all data relating to the contract as well as any other GIZ information, such as submitted documents and exchanged information of which the contractor and its employees become aware in the course of performing the contract, must be treated as confidential during and beyond the term of the contract. This provision applies even if such documentation and information has not been explicitly designated as secret or confidential. As a matter of principle, such information shall only be made accessible and known to persons for whom it is essential for the fulfilment of their tasks (need-to-know principle).

Contractors shall not allow third parties to access documentation or work results of any kind, in particular reports, without the prior consent of GIZ in text form. Third parties under this provision also include the ultimate commissioning party/client.

1.7 Requirement for GIZ's approval for publications

Any publications regarding the contractor's activities within the framework of the project require the prior approval of GIZ in text form, even after the contract has come to an end. GIZ approval is not required for brief descriptions of the contract and of the scope of activities that are intended for use in the contractor's PR work. An outline of the subject matter of the contract and the key results constitutes a brief description. The contractor must always express in an appropriate way that its activities are performed on behalf of GIZ and must name the ultimate commissioning party/client and any other financing parties.

1.8 Use of GIZ's corporate design

When designing materials relating to the contract that are intended for use with third parties (e.g. business cards, letterheads, emails, publications, presentations), the provisions of the Corporate Design Center (https://www.giz.de/cdc/en/html/59557.html) and other GIZ specifications must be followed. The design must also be agreed with GIZ and in the event of direct cooperation also with the responsible partner institution.

1.9. Property rights and rights of use

1.9.1 Basic principle

Unless otherwise agreed in the contract documents, the contractor shall assign to GIZ all assignable ownership and property rights to its work results. If the work results are protected by copyright or other non-assignable property rights, the contractor shall grant GIZ an exclusive and irrevocable right that is unlimited with respect to time, location and content to use all work results, including for commercial use outside the measure. Furthermore, the originator expressly waives the right to be named as such.

1.9.2 Work results

Work results for the purposes of Section 1.9.1. are all material and immaterial outputs that are created or procured in performance of the contract, especially studies, drafts, documentation, articles, information, illustrations, drawings, calculations, plans, photos, materials, film negatives, image files and other visual presentations. Work results shall also include any computer programs that the contractor produces, modifies, procures or makes available in performance of the contract.

1.9.3 Scope of rights of use

GIZ's rights of use shall include the right to use the work results without limitation with respect to time, content and location. GIZ is further entitled to assign to third parties the rights of use granted or to grant third parties simple rights of use.

1.9.4 Freedom from third-party rights

The contractor warrants that the work results are free from any copyright or other third-party rights that would prejudice the use of the work results pursuant to Section 1.9.3. The contractor shall defend GIZ from all claims arising from an infringement of industrial property rights, copyrights or any other property rights due to the use of the work results as agreed in the contract and shall meet all costs and damages imposed on GIZ by a court of law insofar as GIZ has informed the contractor without delay of any such claims and the contractor is entitled to take defensive action or negotiate a settlement. The aforementioned obligation on the part of the

contractor shall not apply if the contractor is not responsible for the infringement of the rights.

1.9.5 Compensation

The contractually agreed remuneration also includes the granting of rights of use.

1.9.6 Contractor's right of use for its own purposes

GIZ may grant the contractor the right – in text form – to use the work results for its own purposes free of charge. GIZ will permit such use if and to the extent that the contractor can demonstrate a legitimate interest and this does not conflict with GIZ's interests. The contractor must name GIZ whenever the work results are used.

1.10 Data protection

Within the framework of the contract, GIZ processes personal data exclusively in accordance with the EU General Data Protection Regulation (EU GDPR) and other applicable data protection regulations.

The contractor shall comply with the requirements of applicable data protection regulations and require such compliance of its employees.

The contractor warrants that any data transmitted to GIZ have been processed in accordance with the applicable data protection provisions and are exempt from any third-party rights which could prejudice the use of these data within the framework of this contract. The contractor shall indemnify GIZ against all claims arising from the violation of data protection regulations and shall reimburse GIZ for all costs incurred in connection with its corresponding legal defence or the imposition of government sanctions.

Should applicable data protection law contain specific principles that must be respected when providing work and services (e.g. a privacy by design or default approach in order to ensure the data protection-friendly implementation of technical requirements), the contractor shall place particular emphasis on the practical application of such principles.

Should the contractor process personal data for GIZ as set out in Article 28 GDPR, this shall take place on the basis of a relevant agreement.

1.11 Prevention of the financing of terrorism and compliance with embargoes

The contractor shall not make any funds or other economic resources available, directly or indirectly, to third parties that are included on a sanctions list issued by the United Nations and/or the EU.

When implementing the contract, the contractor may enter into and/or maintain business relations only with third parties that are reliable and to whom no statutory ban on entering into contractual or business relations applies.

When implementing the contract, the contractor must also comply with embargoes and other trade restrictions issued by the United Nations, the EU or the Federal Republic of Germany.

The contractor must notify GIZ without delay and on its own initiative if the contractor, a member of its official managing body and/or other administrative bodies (in this context its shareholders and/or staff) is included on a sanctions list issued by the United Nations or the EU. This provision also applies if the contractor becomes aware of an event that would lead to such a listing.

The contractor shall notify GIZ without delay and on its own initiative of any violation of the provisions stipulated in this Section 1.11. This does not affect GIZ's rights under Sections 5 and 6 of these Terms and Conditions.

1.12 Obligations resulting from the Code of Conduct

1.12.1 Code of Conduct for contractors

The contractor shall guarantee with regard to its own business activities that it acts in accordance with the Code of Conduct for Contractors of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH ('Code of Conduct') (Annex 4). It warrants that it will appropriately apply the provisions of the Code of Conduct along the supply chain if GIZ establishes the existence of a human-rights or environment-related risk and notifies the contractor thereof.

The contractor is obliged to hold GIZ harmless from third-party claims resulting from a breach of the Code of Conduct unless the contractor can prove that it is not responsible for the breach.

1.12.2 Preventive measures

The contractor must take appropriate measures to minimise the risk of breaches of the provisions of the Code of Conduct. If GIZ identifies (new) risks during performance of the contract, additional preventive measures must be taken. GIZ is entitled to instruct the contractor to take specific measures.

1.12.3 Ensuring access to the complaints procedure in the supply chain

The contractor shall ensure unhindered access for all of its employees to the complaints procedure set up at GIZ. In particular, the contractor shall not undertake any actions that hinder, prevent or complicate access to the complaints procedure. This also applies to reports that human-rights or environment-related obligations have been violated due to the actions of an indirect supplier.

1.12.4 Warranted controls

GIZ is entitled to check whether the contractor complies with the provisions of the Code of Conduct if compliance risks have been identified and the contractor has been informed of them. The corresponding control measures must be appropriate and give due consideration to the contractor's justified concerns. In particular, control measures include the request for comprehensive disclosure, on-site checks by GIZ or a commissioned third party and mandatory certification in line with recognised standards. All control measures relate solely to compliance with human-rights and environment-related obligations.

1.12.5 Participation in training courses

If GIZ identifies compliance risks related to the Code of Conduct, the contractor is obliged at GIZ's request to take part in training courses carried out by GIZ to ensure compliance with the Code of Conduct and to ensure that the Code is adequately applied in the extended supply chain. Participation is not necessary if GIZ agrees and if the contractor confirms in writing to GIZ that it (i) complies with the provisions of the Code of Conduct and (ii) verifiably conducts its own training courses.

1.12.6 Obligations to provide information and documents

The contractor is obliged on request to procure and provide the information and documents GIZ needs in order to meet all

of the regulatory requirements resulting from the contractual relationship, for example requirements related to the German Federal Act on Corporate Due Diligence Obligations in Supply Chains (LkSG).

1.12.7 Legal consequences in the event of violations of the Code of Conduct

If the contractor breaches any of the obligations set out in the Code of Conduct, GIZ is entitled to suspend performance of the contract or terminate the contract if the breach is not remedied after setting a reasonable deadline. There is no need to set a deadline in the event of a serious, persisting or repeated breach. If GIZ terminates the contract for this reason, the contractor shall be deemed responsible for the termination. If the contractor breaches an obligation under the Code of Conduct, the contractor is additionally obliged to pay damages unless it can prove that it is not responsible for the breach. The payment of damages also includes appropriate compensation for reputational damage.

If the contractor breaches an obligation under the Code of Conduct, GIZ is furthermore entitled to exclude the contractor from future competitive award procedures for as long as the breach persists and to the extent appropriate.

The contractor is obliged to pay a contractual penalty for each breach of the Conflicts of Interest (4.1) and the Integrity Principles (4.2); the amount of this penalty (i) depends on the nature and severity of the breach, (ii) is established by GIZ after due consideration and (iii) shall not exceed EUR 50,000. If a pecuniary advantage granted by the contractor as a form of bribery is greater than EUR 50,000, the contractor must pay a contractual penalty equal to this sum. Any further rights to claim damages on the part of GIZ shall remain unaffected. However, contractual penalties that have already been paid shall be deducted from such claims for damages.

1.13 Agreements under international law and implementation agreements

The contractor is obliged to comply with the applicable stipulations of the respective agreements under international law (general agreements on technical cooperation, exchanges of notes) between the Federal Republic of Germany and the country of assignment and, if applicable, any implementation agreements between the project executing agency and GIZ.

2. Provision of work and services by the contractor

2.1 Assignment of experts

The contractor shall ensure that it and any experts it assigns possess the appropriate professional and personal qualifications needed to complete the stipulated tasks successfully.

The contractor is responsible for ensuring that the experts it assigns comply with the relevant provisions set out in the contract and have been adequately informed about the contractual provisions on information security.

2.2 Protective measures, health requirements and necessary insurance policies

The contractor shall be responsible for ensuring that it and the experts it assigns meet the health requirements for the country of assignment. The contractor is in particular obliged to arrange the necessary vaccinations. The contractor must ensure adequate insurance cover (in particular health, repatriation and accident insurance). The contractor must provide evidence of compliance with this provision if requested by GIZ.

GIZ will accept no liability for property damage, sickness, personal injury or death in respect of the contractor or the experts assigned by the contractor to the project, or for the consequences thereof.

2.3 Cooperation with other institutions

The contractor and the assigned experts are obliged to cooperate with the German mission abroad, specialists working in the country of assignment and the representatives of the Federal Republic of Germany working in the country of assignment, and also – where relevant for (contract) performance – with representatives and experts of multilateral and other organisations.

2.4. Force majeure

Force majeure is an unavoidable event (e.g. natural disaster, outbreak of disease or an epidemic, serious unrest, war or terrorism) that no human foresight or experience could anticipate, that cannot be evaded or overcome by applying economically reasonable means or taking utmost care and that prevents or impedes one party to the contract from fulfilling their contractual obligations. If an event originates from the sphere of responsibility of one of the parties to the contract, this shall not constitute force majeure.

In the event of force majeure, the contractual obligations, insofar as they are affected by the event in question, shall be suspended for as long as it remains impossible to render the services because of this situation, provided that one party to the contract notifies the other party to the contract about the force majeure event without undue delay. In this case, the contractor is obliged to take all measures to keep the expenses resulting from the force majeure event as low as possible and to document them.

If the provision of services becomes permanently impossible due to the force majeure event or if the force majeure event persists for longer than three months, both parties to the contract are entitled to terminate the contract without further notice. This shall not affect GIZ's rights of termination as set out in Section 4.3.

In the event of interruption or termination as a result of force majeure, the services rendered and all proven, necessary and unavoidable expenses incurred by the contractor shall be invoiced in accordance with the contract prices. GIZ may refuse to reimburse expenses in accordance with this provision if the contractor fails to provide GIZ with sufficient evidence or documentation of its expenses and the measures taken to reduce them, or the contractor does not do so promptly without having good reason for late submission of the evidence or documentation. Expenses arising after a period of two months after the commencement of the interruption shall not be reimbursed.

If, due to force majeure, the activity is continued with GIZ consent at a location other than the place of assignment, payment of the contractually agreed fee shall continue. Payment of the other remuneration items will continue in the contractually agreed amount for a period of up to three months unless they are or can be saved, or the resources are used for a different purpose.

2.5 Information and reporting obligations

2.5.1 Reporting obligations

The contractor shall submit to GIZ the type of reports specified in the contract punctually, at the required intervals, in the agreed form and language, and in the format stipulated. Unless otherwise agreed in the contract, the contractor shall prepare the reports in English and forward them to GIZ in electronic form (both in a format that is MS Word compatible and as a pdf file).

2.5.2 Obligation of the contractor to report on the status of the contract

GIZ may at any time review the status and results of the performance of the contract, including the project accounts and any project-related special accounts. The contractor must keep the necessary records available and provide the required information. At the request of GIZ, the contractor shall also provide information to other institutions or persons and organisations commissioned by GIZ and to make audits possible; it also undertakes to cooperate appropriately in any such audits.

2.5.3 Reporting information security incidents

The contractor must notify GIZ (informationsecuritymanagement@giz.de) without delay and in appropriate form of any information security incidents that (also) concern GIZ information.

An information security incident is an event that could negatively impact information security, for example through unauthorised viewing/disclosure of information (loss of confidentiality), modification of information (loss of integrity) or deletion of information/disruption of access to information (loss of availability).

2.6 Keeping of contract-related records

The contractor must keep contract-related records and work results, including financial records, for ten years after acceptance of the final report or, as the case may be, of the performance of the work and submit these records to GIZ on request.

Any other documents, aids, materials or objects received from GIZ that – under the terms of the contract – were not permanently handed over to the contractor must be returned by the contractor immediately and without being requested to do so at the end of the contract. This also applies to all copies.

In the aforementioned cases, the handover procedure is specified by GIZ. GIZ is also entitled to demand erasure (i.e. information cannot be reconstructed) or destruction in whole or in part. Evidence of the erasure and the procedure applied is to be provided to GIZ on request, for example by means of a written explanation. Additional remuneration will not be provided.

Statutory storage obligations and periods remain unaffected by this provision.

2.7 Procurement of materials and equipment

In the case of the contractually agreed procurement of materials and equipment, a certificate confirming handover to the recipient designated in the contract must be submitted in addition to the vouchers required pursuant to Section 3.2.1.

Procurement orders may only be placed with qualified and competent providers on cost-efficient terms and on the basis of competition. In the procurement process, the contractor must ensure transparency, equality of treatment, the eligibility of tenderers and sustainability. As far as possible, at least three tenders are to be obtained. The contractor must comply with the rules for inventorising and handling over equipment and materials (Annex 1).

2.8 Use of end devices

Whenever end devices are used within the framework of contract implementation, the contractor must ensure that the place where they are used is suitably secure and that the devices cannot be used by unauthorised persons. It is also necessary to ensure that unauthorised third parties are prevented from viewing GIZ-related information (e.g. by using privacy filters).

3. Remuneration and invoicing

3.1 Principle of remuneration, items of remuneration

The price specified in the contract is a maximum amount; any costs in excess of this shall not be reimbursed.

In addition to the contractually agreed price the contractor may, where applicable, invoice value-added tax (VAT) at the statutory rate.

Remuneration is paid for contractually agreed items of remuneration; the amounts agreed are the maximum amounts in each case.

Rebates, discounts, refunds, tax concessions or refunds and all other price reductions obtained by the contractor when providing work and services, the costs of which are reimbursed by GIZ, must be taken and passed on to GIZ or deducted from the invoice.

3.1.1. Fee

The fee is calculated on the basis of expert-days. An expert-day is a full day on which the contractor or one or more of the experts it assigns provides work and services for GIZ. Days used exclusively for travel are not considered to be expert-days.

If contractually agreed, expert hours may also be used as the basis for calculating fees in individual cases. No other units may be invoiced.

The contractor's fee or the fee of the experts assigned by the contractor covers all personnel costs including ancillary personnel costs, communication costs, reporting costs and all overheads, profit, interest, risk, etc.

3.1.2 Travel expenses

3.1.2.1 Air travel expenses and other transport costs

Air travel expenses and other transport costs are reimbursed to the extent agreed in the contract, either to the amount for which evidence is provided or as a lump sum.

3.1.2.2 Per-diem allowance

The per-diem allowance covers the additional cost of subsistence to the contractor or the contractor's experts during an assignment away from their regular domicile and/or seat of business for a period as of a one-day business trip.

3.1.2.3 Overnight accommodation allowance

The overnight accommodation allowance covers the cost to the contractor or the contractor's experts of accommodation on an assignment away from their regular domicile or seat of business, if an overnight stay is necessary.

Overnight accommodation allowances are only paid if the contract necessitates an overnight stay. Information on such stays is stored in a separate section of the time record.

3.1.2.4 Other travel expenses

Other contract-related travel expenses are reimbursed up to the contractually stipulated number and quantity, either to the amount for which evidence is provided or as a lump sum depending on the contractual agreement.

Travel between the place of residence and workplace are private journeys and not included in 'other travel expenses'.

3.1.3 Other costs

3.1.3.1 Subcontracts

In the case of subcontracts, the actual costs incurred are reimbursed within the contractually agreed scope to the amount for which evidence is provided.

3.1.3.2 Flexible remuneration item

Where a flexible remuneration item is contractually agreed, the contractor may exceed the contractually agreed quantities up to the amount of the flexible remuneration item, taking into account the contractually agreed individual rates and bases for invoicing. The flexible remuneration item only covers costs for items listed where these are contractually agreed.

The use of the flexible remuneration item must be approved in text form by GIZ before the costs in question are incurred.

3.2 Terms of payment, invoicing for contracts for services

3.2.1 Presentation of invoices

The contractor shall bill GIZ for its services in an invoice that complies with the legal requirements.

As a matter of principle, all payments require presentation of relevant evidence. All the necessary vouchers must be attached in the original.

3.2.2 Time records

Fees and any contract-related per-diem or overnight accommodation allowances requiring payment are invoiced on the basis of time records (Annex 3) in which the contractor enters the number of expert days.

3.2.3 Final invoice, final payment

The contractor shall be obliged to submit the final invoice without delay, and in any event not later than six weeks after the contractual end of the period of assignment. The final invoice may be submitted before the end of the contractually agreed term once the work or services have been completed. The invoice must contain all of the contractor's claims for remuneration, be verifiable and contain all the necessary information (with all the required receipts/vouchers). The final payment is made on submission of the final invoice in due form and the performance of all contractual obligations by the contractor.

Any amounts overpaid by GIZ must be repaid to GIZ by the contractor without delay after invoicing.

If an advance payment was made and the contractor does not submit the final invoice within 15 days despite a reminder by GIZ, the contractor shall be obliged to repay the advance payment.

3.3 Terms of payment, invoicing for contracts for works

Contracts for works shall be subject to the conditions of Section 3.2 with the following provisions:

3.3.1 Claim for payment

The final invoice must be submitted without delay and in any event not later than six weeks after acceptance. It must contain all of the contractor's claims for remuneration, be verifiable and contain all the necessary information (with all the necessary receipts/vouchers).

Payment of remuneration is due after acceptance of the work and services and following receipt of a final invoice containing all the required details (together with all necessary receipts/vouchers). Payment shall be made by GIZ no later than 30 days after justified claims fall due.

3.3.2 Security deposit

If payments on account have been agreed in the contract, 10% of the amounts invoiced in accordance with the contract (including VAT) shall be retained and initially not disbursed. This amount can be released against the provision of a security. The amount retained shall be disbursed following acceptance of the work as a whole.

3.3.3 Acceptance

Acceptance shall be effected in text form.

GIZ shall be entitled to submit warranty claims for any defects that were evident on acceptance even if it did not reserve the right to make such claims at that time.

4. Supplementary performance, interruption and termination

4.1 Supplementary performance

If the contractor's performance is defective, GIZ may require supplementary performance; however, requiring supplementary performance is not a prerequisite for asserting other rights.

4.2 Interruption on GIZ's instruction

GIZ may at any time order a complete or partial interruption of the activity, for political reasons for instance. In this case, the contractor must take all necessary measures to keep its expenses as low as possible.

If the interruption lasts for more than three months, the contractor may terminate the contract.

In the event of interruption or termination, the services rendered up to that point and all proven necessary expenses incurred by the contractor up to the end of the interruption shall be invoiced at the contract prices. No further claims are permissible.

4.3 Termination

GIZ may terminate the contract at any time without setting any further deadlines or making a prior request for deficiencies to be corrected, either wholly or in respect of individual parts of the work and services or with regard to individual experts.

4.3.1 Grounds which are not the fault of the contractor

If GIZ terminates the contract for a reason that is not the fault of the contractor, the contractor shall be entitled to demand the agreed remuneration. However, the contractor must allow deduction of expenses which are or could be saved, as well

as of earnings from the alternative use of the resources in question, or of potential earnings foregone wilfully. Fees, salaries and ancillary salary costs are deemed to be saveable if they relate to periods more than 60 days after receipt of notice of termination.

The contractor bears the burden of proof in the cases of exception.

4.3.2 Grounds which are the fault of the contractor

Should GIZ terminate the contract for a reason which is the fault of the contractor, only the work and services already performed will be remunerated – provided that GIZ has a use for them – either at contract prices or on a pro rata basis taking into account the contract prices and the work and services provided in comparison to what would have been required for complete performance of the contract. Work/services that cannot be used shall be returned to the contractor at the latter's expense. If the contract performance comprises the provision of services, any services rendered in accordance with the contract up to the date of termination shall be deemed to have been usable. Under no circumstances shall entitlement exceed the total contract value.

5. Liability and delays

5.1 Liability

The contractor is liable pursuant to the statutory provisions. In addition, GIZ shall be entitled to claim for loss or damage suffered by the recipient of the work and services as a result of the contractor's failure to meet its contractual obligations.

5.2 Delays in the progress of work and services

If the contractor fails to meet the agreed dates and deadlines for an agreed piece of work and does not deliver the work within the period of grace set by GIZ, then GIZ shall be entitled, as soon as the period of grace has expired, to demand a contractual penalty of 0.5 % of the remuneration for each week or part thereof after expiration of the set period of grace; however, the contractual penalty shall not exceed a total of 8% of the remuneration.

6. Final provisions

6.1 Prohibition of assignment by the contractor

The assignment of claims arising from the contract is excluded unless GIZ has agreed to such assignment in writing.

6.2 Partial invalidity

Should individual provisions of this contract be or become invalid or unenforceable, the validity of all other provisions in the contract will remain unaffected. The invalid or unenforceable provision is to be replaced by a valid and enforceable provision, the effects of which most closely replicate the economic objective which was pursued by the contractual parties with the invalid or unenforceable provision. This applies correspondingly if it emerges that the contract has gaps or omissions.

6.3 Annex to the Terms and Conditions

1. GIZ rules on inventorising and handing over equipment and materials
2. Award note
3. Time record
4. Code of Conduct for GIZ contractors

The relevant forms, documents and explanations of the above annexes to the Terms and Conditions can be found on the GIZ website Home - giz.de • Doing business with GIZ • Procurement and Financing – GIZ as a public sector contracting authority • Contracts for services and construction as well as development partnerships: Contract management, invoicing and accounting procedures (overview page).